

September 24, 2003

Allan W. Klein
Office of Administrative Hearings
100 Washington Square, Suite 1700
100 Washington Avenue South
Minneapolis, MN 55401-2138

**RE: OAH Docket # 6-2901-15394-1
Environmental Quality Board's Proposed Permanent Rules Governing
Environmental Review of Electric Power Generating Plants and High Voltage
Transmission Lines in Proceedings before the Public Utilities Commission, parts
4410.7010 to 4410.7070**

Dear Judge Klein:

The Minnesota Public Utilities Commission (Commission) offers the following additional comments on the Environmental Quality Board's (EQB) Proposed Permanent Rules Governing Environmental Review of Electric Power Generation Plants and High Voltage Transmission Lines in Proceedings before the Public Utilities Commission, which were published in Volume 27 of the *State Register*, Issue 47, Monday, May 19, 2003. The EQB staff proposed some changes to the proposed rules on August 25, 2003.

The Commission believes the EQB staff has produced a workable compromise among various points of view, including the Commission's, and generally supports adoption of the August 25, 2003 version of the rules as proposed by EQB staff. The Commission would oppose any changes to the proposed rules that would add additional procedural steps in the environmental report process or would otherwise compromise the Commission's ability to issue its certificate of need and transmission projects report certification decisions within the time frames directed by statute. The Commission would also oppose any changes that would restrict its ability to control its own notice procedures and amend its own notice rules.

4410.7030 and 4410.7050, Environmental Report Procedures and Timing Issues

At the September 4, 2003 rules hearings several persons suggested additional steps be added to the environmental report process, such as requiring the EQB to respond in writing to comments on the environmental report.

The Commission recognizes that consideration of environmental factors is very important in certificate of need proceedings. However, other issue areas, including reliability and cost, also must be considered critically by the Commission when it makes a certificate of need decision.

The Commission believes that environmental information should be subject to the same time lines as testimony and information in the other issue areas. It would not be appropriate for significant information to be raised for the first time in written responses, if the time for such responses were to extend beyond the close of the record in the contested case proceeding. Ideally, any responses to comments from intervenors or the non-party public would be made before the close of the evidentiary proceedings. The Commission believes this applies equally to responses to comments from all participants, including the applicant, other state agencies, intervenors, and the non-party public. At some point, the hearings must end and the evidentiary record must be closed; that schedule must, to the extent possible, comply with the six-month statutory time deadline.

The Commission believes that requiring written responses to comments from the EQB staff would present significant timing problems. If such comments were to be available before the close of the hearings, the only ways to accommodate them would be to lengthen the period for hearings or to shorten the time the public has to react to the environmental report. The latter option undoubtedly would be unacceptable to the affected public, as it would largely eliminate its ability to study and respond to the report. The former option would make it impossible for the Commission to meet the six-month statutory deadline for a decision, even for projects that are relatively non-controversial. The Commission must oppose any procedural requirement that would make it impossible for it to meet a statutory mandate.

The Commission does not agree that the statutes require the EQB to provide for written responses to comments on the environmental report. Substantial opportunity will exist within the proposed environmental report process and the certificate of need process for public involvement and feedback from the agencies. It is the Commission's view that the state's final response to all written and oral comments is the written certificate of need decision issued by the Commission.

The Commission acknowledges that some members of the public may choose to participate only in the siting/routing process for a large energy facility. However, the Commission believes that a "final environmental report" would be inadequate and inappropriate to serve as a "bridge document" to summarize the certificate of need process for the facility. The certificate of need record contains much more than the environmental document(s) required by either the current rules or the proposed amendments. The best documents summarizing a given certificate of need proceeding have been, and will continue to be, the report of the assigned administrative law judge and the written decision(s) issued by the Commission.

4410.7030, Subpart 1, Notice to Interested Persons

At the September 4, 2003 rules hearings, concerns were raised that 4410.7030, subp. 1 D refers to notice required by Commission rules on certificate of need and transmission projects reports, rather than repeating the specific language of the Commission's rules. The Commission prefers the reference to the rules because the specific language could restrict the Commission's ability to make necessary changes to its own rules in the future.

As Commission staff indicated at the September 4 hearings, notice is an area where new procedures have been evolving over the past two years. Most of the emphasis during that time has been on notice for transmission proceedings.¹ If the Commission were to undertake a future rulemaking to change notice requirements for power plants and other single-site facilities, it may not be appropriate to adopt the exact language from the biennial transmission planning rules. The Commission would need time to develop new procedures to write into proposed rules. The Commission has authority to consider notice issues on a case-by-case basis if circumstances warrant notice beyond that required in existing Commission rules for facilities other than transmission lines. Consequently, the Commission must oppose including any language in the proposed rules that would restrict the Commission's ability to amend its own rules at some future time.

Finally, the Commission also requests that you pay close attention to the four excellent points raised by the Department of Commerce in its oral statement on September 4, 2003.

Thank you for the opportunity to comment.

Sincerely,

Burl W. Haar
Executive Secretary

c: Alan Mitchell
Marya White

¹ The Commission's Biennial Transmission Filing Rules became effective on June 23, 2003. The Commission is in the process of amending its rules covering notice in transmission line certificate of need proceedings. By the end of October 2003, Commission staff hopes to receive Commission approval to publish the proposed rules in the State Register. According to internal estimates, the earliest the rules could become effective is next March or April 2004. Nevertheless, the interim period between adoption of the EQB rule amendments and the Commission rules likely will be only a few months.